

State Records Committee Meeting

Division of Archives
Courtyard Meeting Room
August 21, 2014
Salt Lake City, Utah

Members present: Lex Hemphill, Chair, Media Representative
Doug Misner, History Designee
Patricia Smith-Mansfield, Governor's Designee
Holly Richardson, Citizen Representative
David Fleming, Private Sector Records Manager
Ernest Rowley, Elected Official Representative
Member not present: Marie Cornwall, Citizen Representative

Legal Counsel: Alan Bachman, Attorney General's Office
Chiarina Bautista, Attorney General's Office

Executive Secretary: Janell Tuttle (acting as), Utah State Archives

Attending via phone: None

Others Attending: Colby Frazier, *Salt Lake City Weekly*
Rosemary Cundiff, Ombudsman
Richard Mrazik, Attorney, *BuzzFeed*
Colleen Mulvey, Cedar Hills
Blaine Ferguson, Attorney General's Office
Melanie Kendnok, Attorney General's Office
Michael Green, Attorney General's Office
Michelle Kfouly, Attorney General's Office
Catherine Taylor, Department of Human Services
Stephen Homer, Attorney
Dennis Garcia, Petitioner
Matt Anderson, Attorney for Corrections
Amanda Montague, Attorney for Corrections
Greg Johnson, Board of Pardons and Parole
Bryan Kasteler, DTS, Utah Department of Corrections
Gina Proctor, Department of Corrections
Steven Turley, Department of Corrections
Rebekkah Shaw, Archives staff
Nova Dubovik, Archives staff
Renée Wilson, Archives staff
Kendra Yates, Archives staff

Mr. Lex Hemphill opened the meeting at 9:03 a.m. Mr. Hemphill introduced Mr. Alan Bachman filling in as counsel and Ms. Janell Tuttle filling in as the Executive Secretary. He stated that Ms. Susan Mumford had been reassigned and introduced Ms. Nova Dubovik as the newly appointed Executive Secretary.

Hearing: Dennis Garcia vs. Board of Pardons & Parole

Opening-

Mr. Dennis Garcia and his attorney, Mr. Stephen Homer, were not available to begin the hearing. The committee decided to continue with other business.

Approval of July 10, 2014, Minutes

Ms. Patricia Smith-Mansfield made a motion to approve the minutes of July 10, 2014. Mr. Misner seconded the motion. The motion passed 4-0; Mr. David Fleming and Mr. Ernest Rowley were not present at July 10, 2014, meeting and abstained from voting.

Approval of Retention Schedules

Utah State General Records Retention Schedule:

Ms. Rebekkah Shaw presented two Administrative Records Schedules. First to be reviewed were the Records Destruction Files and Information Governance Records. Mr. Rowley suggested adding "policy" to the first sentence, to be read as "records management policies, practices and procedures;" in addition to, revise the second sentence by removing "records management procedures". A motion to approve was made by Ms. Smith-Mansfield and seconded by Mr. Fleming to approve retentions as amended. A vote was unanimous, 6-0.

Ms. Shaw presented Facility Management Records. She explained that the retention is permanent. Mr. Rowley asked if these include the right of way documents. Ms. Shaw responded they do. Mr. Bachman clarified that this current approval is just for the as-built plans. A motion to approve was made by Mr. Fleming and seconded by Mr. Rowley to approve retention schedules. A vote was unanimous, 6-0.

State Agencies:

Ms. Kendra Yates presented two records series from the Horse Racing Commission. The records consist of Application for Horse racing licensing and Utah Horse Racing Commission race completion packets. Ms. Smith-Mansfield asked about retention and Ms. Yates responded these packets have a permanent retention due to historical value. A motion to approve was made by Ms. Smith-Mansfield and seconded by Mr. Fleming to approve the two horse racing records series. A vote was unanimous, 6-0.

Lastly, Ms. Yates explained the Tax Commission wants to change the retention schedule for Tax evader and protester files to 6 years, which is longer than the previous retention. This will satisfy any possible appeals the Tax Commission might encounter. A motion to approve was made by Mr. Fleming and seconded by Mr. Doug Misner. A vote was unanimous, 6-0.

Resume Hearings:

The second hearing was brought forward as attorneys for the first hearing, Dennis Garcia vs. Board of Pardons and Parole, were discussing a possible resolution with the state government ombudsman, Rosemary Cundiff.

Mr. Hemphill introduced the parties as Richard Mrazik acting on-behalf of Alex Campbell, *BuzzFeed Inc.*, and Matt Anderson acting on-behalf of the Utah Department of Corrections (UDC). Mr. Hemphill explained the hearing procedures.

Hearing: Alex Campbell, *BuzzFeed, Inc.*, vs. Utah Department of Corrections**Opening-Petitioner**

Mr. Richard Mrazik stated Mr. Alex Campbell is requesting to obtain copies of public records in the UDC offender database of all inmates currently housed but not limited to: inmate name, inmate number, date of birth, conviction and/or sentence date, offense(s), and sentence length. Mr. Mrazik continued asking, is the information a record and, if so, is it public and can it be supplied by not having to compile and tailor it into a different record? They believe it is public and the real question is if it can be provided without having to manipulate the database then it does not fall into propriety software and data exemption. *BuzzFeed* has worked with 20 other states that have provided the information. Mr. Campbell is not requesting a copy of the proprietary software through which UDC accesses the database or an electronic copy of the entire database; he seeks access to the raw electronic data in the format it is maintained. It is understood the cost could be high.

Opening-Respondent

Mr. Matt Anderson states the petitioner was offered the documents known as the J&C, Judgment and Commitment Order, in paper format that contains all the data that Mr. Campbell is requesting. This document comes from UDC and it is the raw data. The problem with the database request is that IT will incur burden (time and cost) to present it in the format requested. Mr. Campbell is requesting information arranged in columns and that will entail compilation or creation of a new record. The Legislature balances the public interest by having an agency operate under non burden. In addition, allow agency to provide fees, and in the 2006 amended GRAMA it states that an agency is not required to provide a record in a format that it does not maintain. Mr. Campbell asked for data in columns and that will need to be organized from the raw data, compiled, and formatted. The original data is available for him to review during normal business hours.

Testimony-Petitioner

Mr. Mrazik responded by stating Mr. Campbell is asking for an electronic copy that already exists. The argument is that providing the J&C paper document is not meeting the intent of the request for electronic records. Mr. Anderson mentioned the Graham case in his opening and that is about fees; in addition in that case the electronic records were provided. In the Maese case they asked for a database in its entirety. This request is different, they are not asking for the entire database. If the database comes out in a technical format then *BuzzFeed* will figure out a way to view the information. Mr. Mrazik argues an important Board decision where UTA was required to provide an electronic version of a database and the committee voted that access to a public database

cannot be restricted. Mr. Hemphill stated that in the Stecklein/*Salt Lake Tribune* vs. Utah Transit Authority, Case No. 12-24, there was no other option for viewing the records and that is why the committee released the records. Mr. Mrazik responded that even though the information might be available in the J&C the need to review the electronic database is necessary. Mr. Hemphill asked if Mr. Campbell requested these records from every state. So far only 20 states have been requested, but eventually all would be requested, and they are providing it in a PDF, MS Excel spreadsheet format, and others have been received in raw data.

Testimony-Respondent

Mr. Anderson brought a witness, Brian Kasteler. Mr. Hemphill swore him in. Mr. Kasteler is currently employed at the DTS office at UDC. He has been assigned there for 10 months and worked for the state 29 years. He has had experience working with databases and is familiar with the offender database. The database contains information about the offenders and the prison system itself, to include names, dietary needs and location of prisoner it also handles staff, officers, and who's on shift. It is an IMB Forex database and it is a relational database. The requested information is not currently in columns and not easily extracted. Mr. Campbell is requesting just the data in the database; this is not possible because the database does not work in that capacity. The database right now is proprietary conformance and not a flat file. A database administrator would have to write a schema to pull these records out. Then a developer on the other end would output the schema into the format needed or is readable. There are two database administrators at UDC. One just writes business reports and the other works on the offender database. It is estimated the time to extract the data is approximately 20 hours total. Mr. Anderson stated that data can be extracted, however everything takes time and effort. Ms. Smith-Mansfield asked whether it was in a sequel database, and in what format? Mr. Kasteler responded it was in XML, PDF, and Excel for the public website and UDC reports. There is an express section in Utah Code § 63G-2-204 (5)(h) that an agency can claim extraordinary circumstances that allows the governmental agency to delay approval or denial by an additional period of time as specific in Subsection (6) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3). Ms. Smith-Mansfield argued that it is segregation to output the information and not compiling.

Mr. Mrazik had no questions for the witness.

Closing-Petitioner

Mr. Mrazik states that legislative intent encourages transparency. An agency cannot deny or reasonably hinder access to records whether maintained electronically or not. The request is for categories maintained by the UDC that are public. The information and tables already exist and they want the schema run for all offenders and they will deal with the raw data and format, however it comes out. They just want the export of the schema. He requests that the committee provide the records requested.

Closing-Respondent

Mr. Anderson referred to the case law-Maese vs. Tooele which would have required information from a database to be extracted. In Maese the documents were available at the county and the court agreed that the source records had been available and therefore satisfied GRAMA. Trying to balance public interest and work to export database, Maese could compile his own information citing Utah Code § 63G-2-201(12). UDC can provide a paper equivalent with the J&C, and then *BuzzFeed* can compile information themselves. He requests that the committee find in favor of the UDC since providing the J&C would satisfy GRAMA.

Deliberation

Mr. Fleming stated that the data is available in an electronic format and it is well argued that GRAMA does not require governmental entities to create an output they do not already have. The database is a record and there needs to be a way to pull together the information, in doing so they are required to compile in order to meet this request. Mr. Hemphill states that from a transparency standpoint, *BuzzFeed* should be entitled to the record but the language of GRAMA is that agencies do not need to compile. Mr. Campbell is in New York and it would be difficult for him to access the UDC office to compile. Ms. Holly Richardson disagrees that the information he is seeking is available, however the GRAMA intent is to make the records available. Mr. Fleming stated Utah has GRAMA to work with and it does not matter what the other 20 states have done. There is an impossible barrier and agencies cannot use the electronic format to hinder access. If the agency is outputting reports then they already exist and can be provided. The concern by Mr. Hemphill is what precedent the SRC is setting if they order the database to be released; however databases have to be programmed to run reports.

A motion was made by Ms. Richardson pursuant to Utah Code § 63G-2-201(12) to grant the petitioners request and seconded by Mr. Rowley. Mr. Rowley retracted and a second motion was made by Ms. Smith-Mansfield pursuant on Utah Code 63G-2-308. Mr. Rowley and Mr. Hemphill opposed. The motion was approved 4-2 with 4 in favor and 2 opposed.

Mr. Bachman requests clarification as to a fee waiver and that a disclaimer be added as to the date the records were provided. The fee waiver was formally requested in the written material but in testimony Mr. Mrazik indicated *BuzzFeed* would be willing to pay for the cost. A motion was made by Ms. Smith-Mansfield to deny a fee waiver and was seconded by Mr. Rowley. A vote was unanimous, 6-0. Mr. Hemphill explained that Mr. Bachman will produce an order within 7 business days and he thanked the parties involved.

Board dismissed for a 5-minute break.

Reconvened at 11:23 a.m.

Mr. Hemphill introduced the parties; Mr. Stephen Homer on-behalf of Mr. Dennis Garcia, and Ms. Amanda Montague and Mr. Greg Johnson on-behalf of the Board of Pardons and Parole. Mr. Hemphill explained the procedures.

Hearing: Dennis Garcia vs. Board of Pardons and Parole

Opening-Petitioner

Mr. Homer clarified that he is representing Mr. Garcia and is not the petitioner. Mr. Homer made the suggestion that the SRC go *in camera* to review the disputed document, the "Hearing Worksheet," so they know what had been discussed among the Board of Pardons members. Background information: Mr. Garcia was involved in a fatal car accident in 2006, which killed the passenger. He went to jail and the Board of Pardons voted and ordered him to pay restitution of \$7,000 to cover the victim's funeral expenses as restitution. He was unaware until 2013 of the resolution vote and the questions is, are there records specifically relating to the vote, and is there something they are hiding that is critical to the case?

Opening-Respondent

Ms. Montague stated the document in question is available for the committee to review *in camera*. In addition, she brought all of the documents that assisted the board's decision in the resolution vote. She explained the hearing board process entails one officer, the hearing officer, who summarizes what happens during the open hearing. During the second part of the process each board member individually reviews the hearing officer's summary and makes comments for or against the proposal. Once there are three votes the final decision is written in an official document and is provided to the offender. The Board of Pardons and Parole's need to keep the document protected clearly outweighs any need to know.

Testimony-Petitioner

Mr. Homer reiterated that Mr. Garcia never received a full hearing in 2010 and there are no minutes available to confirm the meeting took place, and there needs to be three affirmative votes. Mr. Homer continued by questioning, did the Board members know that they were voting on the \$7,000 for restitution; and stating the record can be disclosed if the need for disclosure outweighs the need for secrecy. In addition, the Board missed the 60-day deadline from when Mr. Garcia was released from prison. He wants the specific information on the "Hearing Worksheet" to include the wording pertaining to the restitution vote. The Board is not like a jury and the petitioner is skeptical that they have gone through the correct procedures. The Board calls this document a note or internal memo and therefore it is not a record. The internal memo is protected when used by judges, but that does not apply here. Identities of the board members are not being requested, only that there were three unconditional votes to order restitution. It is felt that the Committee needs to weigh the issue and release the records. Ms. Smith-Mansfield asked for clarification on what records were previously provided; Mr. Homer responded, all but this one.

Testimony-Respondent

Mr. Johnson is sworn in. He is the administrative coordinator for the Board of Pardons and Parole. He oversees policies and procedures and is familiar with the process of the Board and explains that a hearing officer conducts the board meeting. Mr. Johnson explains that the hearing officer makes a recommendation and provides that information to the Board members. The Board reviews the summary and recommendation of the

hearing officer. They review it individually and they agree or they make additional recommendations. If it goes to 5 board members for review then they sit down and hash it out. Mr. Hemphill asked, if it goes to Board members 3 and 4 do they see the previous comments. In response, Mr. Johnson stated, yes, the voting process takes place on the hearing summary worksheet. Once they have 3 votes then the offender receives an order from the Board, furthermore the rationale sheet is a public document and it is provided to the offender. Mr. Garcia received everything the board relied on for their decision. This includes letters from victims, letters from the public, and this goes beyond what GRAMA requires. Ms. Smith-Mansfield stated that the SRC heard this issue previously but the records included more information. In the current case the documents include the hearing notes that had not been released and in this case there is only 2 pages, whereas the previous case had 7 pages. The written notes on the internal memorandum are protected because they show the procedures and processes to reach a vote by the board members.

Ms. Montague states that Mr. Garcia has the Order of the Board and so he knows the restitution vote. The Board wants to preserve their procedure because it allows Board members to be candid in their decision knowing it is a protected process. The GRAMA statute § 63G-2-103(22)(B)(xi) states “a note or internal memo...is not a record.” Mr. Hemphill questioned whether the legislature understands the idea of the process and the context of the vote as protected or a non-record. Final opinions are public, but the Board does not issue final opinions and members votes are part of the deliberation.

Closing-Petitioner

Mr. Homer states the quantity of documents Mr. Garcia was provided is irrelevant and that the issue at hand is that they want the “Hearing Worksheet” or the vote record; and this record should be disclosed to Mr. Garcia. The piece of paper is the document that reflects what happened and what did not happen during the voting processing. There is a level of resistance from the Board and that makes him suspicious that that correct procedure was not followed. Furthermore, the actual order was accomplished 3 years after the fact and the statute that cites the parole board (U.C. 77-27-5) states that a full hearing is required, and section 8 requires that the parole board hold and record meetings. As an example, he uses the city council meets and makes decisions that are public, and the deliberation is part of the minutes. He wants to see the actual language of the restitution vote. The question before the board is, should this paper be disclosed and Utah Code 63G-2-403 should be used to weigh the issue.

Closing-Respondent

Miss Montague restates statute Utah Code § 77-27-5(1)(c) concerning parole boards procedures. Furthermore she explained that the hearing did take place and that Mr. Garcia attended the meeting and minutes are available. The restitution order has been provided to him and he does not need to see the worksheet. The worksheet is protected and she asked the committee to affirm the denial of records.

A motion was made by Mr. Fleming to go *in camera* session and seconded by Mr. Misner. A vote was unanimous, 6-0.

SRC reviewing the document *in camera*

A motion was made by Ms. Smith-Mansfield to move back into session and seconded by Mr. Misner. A vote was unanimous, 6-0.

Deliberation

Ms. Smith-Mansfield states the "Hearing Worksheet" was previously identified as a non-record. Classification may be changed at any time so that it could be different; and she is presently persuaded that it is part of the deliberative process of the Board of Pardons.

A motion was made by Ms. Smith-Mansfield that this particular "Hearing Worksheet" is appropriately noted as "not a record" pursuant of Utah Code § 63G-2-103(22)(b)(xi) and Appeal 06-02. Mr. Fleming seconded the motion. A vote was unanimous, 6-0.

No motion on fee hearing.

Mr. Hemphill explained that Mr. Bachman will produce an order within 7 business days and he thanked the parties involved.

Report on August Appeals and September 11, 2014, Appeals.

Janell Tuttle reported on SRC appeals requests received in August, and there are currently 3 hearings scheduled for September 11, 2014.

Cases in District Court

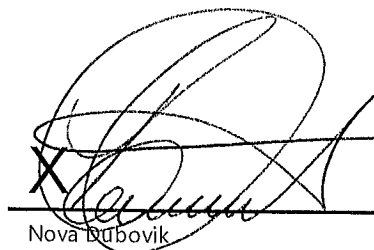
Mr. Bachman stated that Paul Tonks will report next time on these items.

Other Business

Janell asked the board members to sign a Thank you card for Susan Mumford.

The August 21, 2014 State Records Committee meeting adjourned at 1:15 p.m.

This is a true and correct copy of the August 21, 2014, SRC meeting minutes, which were approved on September 11, 2014. An audio recording of this meeting is available on the Utah Public Notice Website at <http://www.archives.state.ut.us/public-notice.html>.


Nova Dubovik

11 September, 2014

SRC Executive Secretary